

AMENDED ADMINISTRATIVE AGREEMENT

This Amended Agreement, dated the [16] day of December 2009, is made between National Air Cargo Holdings, Inc., Windward Lot LLC, and National Air Cargo (Deutschland) GmbH ("NAC GmbH") and the United States Department of the Air Force ("Air Force"). As used herein, "NAC" means National Air Cargo Holdings, Inc. ("Holdings") and its affiliated corporations, Windward Lot LLC, and National Air Cargo (Deutschland) GmbH, and includes all operating sectors, groups, divisions, units and wholly-owned subsidiaries of those companies, including those acquired or established during the term of this Amended Agreement. It supersedes the Administrative Agreement dated July 24, 2008, between NAC and the Air Force (the "Initial Agreement").

PREAMBLE

1. NAC is a group of companies which includes an air carrier under the Civil Reserve Air Fleet program and an air freight forwarder authorized by the Surface Deployment and Distribution Command to carry freight under contracts and tenders for the Department of Defense. The principal place of business for NAC's air freight forwarder entity is in Orchard Park, New York. The principal place of business for NAC's air carrier entity is Ypsilanti, Michigan.
2. On October 27, 2007, National Air Cargo, Inc. ("Inc."), a New York corporation and the air freight forwarder subsidiary of NAC, was charged by Criminal Information in the United States District Court for the Western District of New York with one count of filing a false document with the United States, in violation of 18 U.S.C. § 1001(a)(2). The Information alleged that, on or about March 19, 2001, Inc. knowingly and willfully falsified a material fact, in a matter within the jurisdiction of the Department of Defense, by knowingly and willfully sending to the Defense Logistics Agency a falsified proof of delivery form. This document was sent in response to an audit request by the Defense Logistics Agency for proof of timely delivery of shipments by Inc. The document was altered to show a timely delivery date, when, in fact, the real delivery date was untimely. On October 27, 2007, in accordance with a Plea Agreement signed October 27, 2007, Inc. entered a conditional plea of guilty to the charges in the Information. Inc.'s plea was accepted on March 6, 2008.
3. On March 6, 2008, Inc. was convicted of the charges and sentenced to pay restitution in the amount of \$4.4 million and to pay a fine in the amount of \$8.8 million.
4. In accordance with the terms of the Plea Agreement and Amended Plea Agreement, and separate civil settlement agreements entered into by Inc. and the United States on March 6, 2008, Inc. paid \$28 million to cover criminal fines, restitution, civil liability under the False Claims Act, and administrative liability in connection with contractual matters that are the subject of the plea agreement and civil settlement agreements. The civil settlement agreements released NAC from all further liability relating to the conduct covered by these agreements.
5. On May 21, 2008, the Air Force issued Notices of Proposed Debarment to NAC and its affiliates and subsidiaries and also to several executives of NAC. NAC agrees that the facts as stated in the Memorandum in Support of the Proposed Debarments (the "Memo") are correct, with the exception of any explicit or implicit statement that alleges that NAC, an air freight forwarder, was required by regulation to move one leg of every shipment by air. NAC and the government resolved this regulatory disagreement through the United States Court of Federal Claims. NAC acknowledges, however, that this regulatory disagreement does not relate to the bases for its proposed debarment.

6. NAC expressed an interest in demonstrating that, notwithstanding the misconduct Inc. committed, and for which Inc. was convicted, NAC could be trusted to deal fairly and honestly with the Government and that suspending or debarring NAC from future Government contracting was not a necessary protection in this case. NAC has taken responsibility for the wrongdoing. In order to provide assurance to the Air Force that NAC is a responsible government contractor, NAC has established a Board of Directors constituted in accordance with the terms of this Amended Agreement and has agreed to keep in place NAC's Business Ethics Program voluntarily adopted prior to the date of the Initial Agreement and to take other actions as specified in the Initial Agreement to assure that NAC possesses the high degree of business honesty and integrity required of a Government contractor. NAC further agrees to maintain Preston Murray and John Baker as members of its Board of Directors, and to take all necessary and reasonable actions to employ Mr. Murray in a senior management position at National Air Cargo, Inc.'s corporate headquarters. Finally, NAC agrees to appoint an Ombudsman agreeable to the Air Force and unaffiliated with NAC's business operations to provide to the Air Force, quarterly independent assessments of NAC's operations, including the effectiveness of NAC's internal controls and operating procedures pertaining to: the timeliness of NAC's shipments for government customers; NAC's practices for billing government customers; and NAC's self governance program.

7. The Air Force and NAC agreed that Federal Acquisition Regulation (FAR) 9.406 provided bases to debar based upon the conviction and the misconduct NAC committed as set forth in the Memo and civil settlement, with the same exception noted in paragraph 5 regarding the issue resolved through the Court of Federal Claims. The Air Force further determined, however, that based upon information known to the Air Force at the time of the Initial Agreement, NAC's corrective actions reflected in the terms and conditions of the Initial Agreement provided adequate assurance that NAC's future dealings with the Government would be conducted responsibly and that debarment was not necessary to protect the Government's interests. Therefore, the Air Force terminated the proposed debarment of NAC and its affiliates and subsidiaries, and NAC and the Air Force agree to the terms and conditions set out below.

ARTICLES

1. **PERIOD.** The period of this Amended Agreement shall be three years from the date of execution of this Amended Agreement by the Air Force, or, if the Air Force determines at any time during the three years that NAC has ceased to be in full compliance with this Agreement, for a period of three years following reestablishment of full compliance as determined by the Air Force.

2. **EMPLOYEES.** The word employee(s) in this Agreement includes NAC directors, officers, permanent, temporary, and contract employees, and full-time and part-time employees, and consultants.

3. **SELF-GOVERNANCE PROGRAMS.** NAC has implemented and agrees to maintain a self-governance program that includes compliance programs for certain affected employees and a Business Ethics Program that covers all employees. The Business Ethics Program shall be maintained so as to ensure that NAC and each of its employees maintains the business honesty and integrity required of a Government contractor and that NAC operates in strict compliance with all applicable laws, regulations, and the terms of any contract. NAC represents that the Business Ethics Program includes the following components:

- a. **CENTRAL, HIGH-LEVEL PROGRAM MANAGEMENT.** NAC has designated Preston Murray, a member of NAC's Board of Directors and of NAC's management team, to be the NAC Ethics Officer and the Chairman of the Ethics

and Compliance Steering Committee ("CSC"). The Ethics Officer is responsible for managing all aspects of the NAC Business Ethics Program. The CSC will continue to meet quarterly and report to the NAC Board of Directors regarding overall compliance with this Agreement and NAC's Business Ethics Program.

- b. **CODE OF BUSINESS ETHICS.** As part of the Business Ethics Program ("Program") NAC has published a written Code of Business Ethics ("Code") and FCPA Policy ("Policy"). Copies of the Code and Policy were included as exhibits to the Initial Agreement, and are incorporated herein by reference. The Code and Policy have been provided to each employee of NAC. After reading the Code and Policy each employee signs a certification that is maintained by NAC and open to inspection by the Government, that he or she has read and understood the Code and Policy. At least once in each calendar year, each then-current employee repeats the procedure of reading the Code and Policy and signing a certification. Within two weeks of starting employment with NAC, new employees shall read the Code and Policy and sign a certification, indicating that he or she has read and understood the Code and Policy. Within such two week period the new employee's immediate supervisor or other management person shall discuss the content and requirements of the Code and Policy with the new employee.
- c. **INFORMATION AND EDUCATION PROGRAM.** Also as part of the Program, NAC has instituted and shall maintain an information and education program designed to assure that all employees are aware of all laws, regulations, and standards of business conduct that employees are expected to follow and the consequences both to the employee and to the company that will ensue from any violation of such measures. Training consists of at least one hour of annual compliance training and training in the NAC Business Ethics Program for all NAC employees, plus at least one hour of initial training on compliance and the NAC Business Ethics Program for every new NAC employee. Annual ethics training shall be conducted live by each employee's supervisor (or, in the case of the CEO, by the Board) at each of NAC's office locations, and NAC will consider implementing computer-based compliance training as soon as is practicable. A schedule and subject outline for the information and education program was included in the Initial Agreement and is incorporated by reference into this Agreement.
- d. **LANGUAGES.** All written materials and training related to the Business Ethics Program will be provided in English and in any other language necessary to assure that each employee understands all elements of any written or oral presentation.
- e. **REPORTING AND INFORMATION RESOURCES.** NAC has installed a toll-free, dedicated telephone number maintained by an independent third-party for confidential calls reporting suspected misconduct or for asking questions related to business ethics or business conduct. NAC has also instituted an on-line reporting service of suspected ethical violations, which is also maintained by a third-party vendor. In addition, NAC has posted in prominent places accessible to each of its employees, including on its company intranet, a notice giving the toll-free number, inviting confidential communications, and stating the company's commitment to comply with all applicable laws and regulations in the conduct of its business.¹ NAC also has posted the contact details of the Inspector General of the Department of

¹ The parties note that it may not be possible to make such postings inside of Iraq and Afghanistan.

Defense providing phone numbers to report fraud, waste, and abuse, and/or security violations.

- f. **GIFTS PROHIBITED.** NAC has instituted a policy prohibiting giving to any U.S. Government employee any gift, gratuity, meal, refreshment, or entertainment, other than widely-distributed commemorative items of less than \$20 value or occasional refreshments in connection with a business meeting.
- g. **INDEPENDENT AUDIT OF ETHICS/COMPLIANCE PROGRAMS.** The parties acknowledge that NAC retained the services of Carol R. Marshall, Esq. to conduct an independent audit of NAC's ethics and compliance programs, and that Ms Marshall delivered her report of such audit, entitled "Assessment and Recommendations", to the Air Force and to NAC on 19 July 2008. NAC undertook to implement each of the recommendations set out in Ms. Marshall's report. By way of example, but not by way of limitation, NAC shall (a) request that a similar independent ethics consultant, acceptable to the Air Force, again review NAC's ethics and compliance programs between six (6) and twelve (12) months after the date of this Amended Agreement and then again approximately six months prior to the expiration of this Amended Agreement; (b) appoint an ethics point-of-contact at each of its business locations worldwide who shall serve on the CSC under Article 3; (c) monitor the individual serving as both a member of the Board of Directors and Ethics Officer of NAC to ascertain real or perceived conflicts of interests and, if necessary, take such steps as are necessary to eliminate such conflicts, including de-linking the two functions if necessary; (d) plan for the conversion of compliance training to computer-based training as soon as is practicable, with all ethics training to be conducted live at each of NAC's office locations; (e) revise all performance appraisals of its employees to include an ethics and compliance section; and, (f) conduct a formal analysis of NAC's regulatory, business, legal, contractual and other risks, including its existing policies and procedures, followed by a "gap analysis" to determine if the existing policies, procedures, training, work instructions or other company resources are sufficient to mitigate the identified risks, and subsequently modify, improve or create resources as needed.

4. **INDEPENDENT OMBUDSMAN.** At NAC's expense, NAC will appoint and retain within 30 days of the effective date of this Amended Agreement an independent Ombudsman who is unaffiliated with NAC's business operations and acceptable to the Air Force, to review and provide an independent assessment of NAC's operations, including the effectiveness of NAC's internal controls and operating procedures pertaining to: the timeliness of NAC's shipments for government customers; NAC's practices for billing government customers; NAC's self governance program; and NAC's compliance with this Amended Agreement. The independent Ombudsman will deliver reports concerning the independent Ombudsman's processes and findings to the Air Force on a quarterly basis, with the first such report due 90 days after the Ombudsman is retained, or [150 days after execution of this Agreement], whichever is earlier.

5. **PREFERRED SUPPLIER PROGRAM.** NAC has instituted and agrees to maintain a Preferred Supplier Program. The Program is designed so as to require that its suppliers and subcontractors have instituted compliance and values based ethics programs.

6. **PERFORMANCE STANDARDS.** Promotion of and adherence to the NAC Business Ethics Program is an element of each manager's written performance standards and each manager (including the CEO) is appraised annually in writing on his or her adherence to and promotion of the Program. NAC will submit, as a part of each report to the Air Force

pursuant to Article 9, a statement by the Board of Directors and the CEO that they and the Ethics Officer have verified that each manager has been appraised on his or her adherence to and promotion of the Program.

7. **MANAGERS' CERTIFICATES.** NAC has implemented and will maintain an annual certification requirement that each manager at every level in the company (and the Board of Directors with respect to the CEO) attest that he or she personally has (a) discussed with each employee under his or her supervision the content and application of the Code and the Policy; (b) informed each such employee that strict adherence to the law, the Code and the Policy, and the principles of the Program is a condition of employment; and (c) informed each such employee that NAC will take disciplinary action, including discharge, for any violation of law, the Code, the Policy, the principles of the Program, or basic tenets of business honesty and integrity. NAC will submit, as a part of each report to the Air Force pursuant to Article 9, a statement by the CEO that he and the Ethics Officer have verified that the certifications are being maintained and that each manager has provided a certification as required by this provision. The certificates shall be maintained and available for the Air Force's review and inspection.

8. **BOARD OF DIRECTORS AND CEO RESPONSIBLE.** The Board of Directors and the CEO shall be responsible for NAC's Program, for maintaining and updating the Code and Policy, and for auditing NAC's compliance with this Agreement. The Ethics Officer and appropriate members of management shall report to the Board of Directors in person and in writing not less than quarterly concerning the Program and compliance with this Amended Agreement. The Board of Directors and CEO shall take whatever actions are appropriate and necessary to ensure that NAC conducts its activities in compliance with the requirements of the law and sound business ethics. NAC shall provide to the Air Force copies of the written reports and minutes of all such meetings reflecting the reports made to the Board of Directors and their decisions or directions to management concerning any matters in any way related to NAC's Ethics Program or this Agreement.

9. **REPORTS.** Each calendar quarter, the CEO shall submit a written report to the Air Force describing the measures taken by NAC during that quarter to implement the Program and to ensure compliance with this Amended Agreement. The reports shall be submitted in time to be received at the Air Force within twenty days of the end of the calendar quarter. The final report is to be received not later than one month prior to the final day of this Amended Agreement. The reporting dates are deadlines for receipt of the reports at Air Force Headquarters. NAC's failure to meet these requirements on or before the dates agreed to shall constitute a breach of this Amended Agreement. The reports shall include:

- a. Standards of conduct/ethics/compliance training conducted, subject matter covered, and the number and type of persons who attended.
- b. Informal notifications or initiatives relating to the Program.
- c. Information required by Articles 5, 6, 7, 8, 10, 12, and 13. [revise at completion with actual paragraph numbers]
- d. The initiation of and status of any ongoing investigation of, or legal proceedings by the U.S. Government involving NAC, including times, places, and subject matter of search warrants, subpoenas, criminal charges, criminal or civil agreements, etc.
- e. A statement that the CEO and the Chairman of the Board of Directors have verified that the certifications referenced in Article 3 are being maintained and that each employee has signed a certification as required by this provision.
- f. A report identifying all calls made to the company confidential toll-free line

regarding instances of suspected misconduct brought to the attention of management through any other channel during the preceding quarter. Such reports shall summarize the facts of each matter, stating the date and source (generically identified only as employee, consultant, outsider, etc.), medium of the report, the date and nature of the reported conduct, type and results of any internal investigation, corrective and/or disciplinary action and date of feedback to the source of the information. Matters pending resolution at the time of a reporting period shall be reported each quarter until final resolution of the matter is reported. If the company has received no reports, NAC shall report that fact. For purposes of this Article, NAC may summarize the matters reported. The complete NAC files on each case, however, shall be made available to the Air Force upon request.

- g. A statement of any problems or weaknesses identified by the Program, corrective action proposed or initiated, and the status of any corrective action.

10. **MANAGEMENT.** The principal members of NAC management on the date of execution of this Amended Agreement by NAC are set out in Exhibit 1. NAC agrees to notify the Air Force within one week if any of these principals leaves his or her current position and to provide the name of the successor to the Air Force upon appointment.

11. **LEGAL PROCEEDINGS.** NAC represents to the Air Force that, to the best of NAC's knowledge, NAC is not now under criminal or civil investigation by any U.S. Governmental entity. In addition to the periodic written reports required under Article 9, NAC shall notify the Air Force within two working days of the time NAC's Chief Executive Officer or General Counsel learns of (a) the initiation of any criminal or civil investigation by any U.S. federal, state, or local government entity involving allegations of Foreign Corrupt Practices Act, false statements, false claims, corruption, conflict of interest or anti-trust violations, or any other offenses relating to NAC's business integrity, or if NAC has reason to believe that it is a target or subject of such investigation; (b) service of subpoenas by any such U.S. governmental entity, if NAC has reason to believe that it is a subject or target of the investigation; (c) service of search warrants and/or searches carried out by any U.S. government entity in any NAC facility; (d) initiation of legal action against NAC, or any of its affiliates, employees, or agents by any U.S. government entity alleging violations of the Foreign Corrupt Practices Act, false statements, false claims, corruption, conflict of interest, anti-trust violations or any other offenses relating to NAC's business integrity; or (e) criminal charges brought by any U.S. government entity against NAC or any of its affiliates, employees, or agents, relating to the business of NAC. NAC shall provide to the Air Force as much information as necessary to allow the Air Force to determine the impact of the investigative or legal activity upon the present responsibility of NAC for Government contracting.

12. **MEETING.** Between three (3) and five (5) months after the effective date of this Amended Agreement, and again six months prior to its termination, the Chief Executive Officer, Ethics Officer and NAC's majority shareholder (if different from its CEO) shall meet with the Air Force Deputy General Counsel for Contractor Responsibility or a designee to discuss the status of compliance with this Amended Agreement and the implementation of the Program.

13. **REPORTS OF MISCONDUCT.** In addition to the routine reports of misconduct required by Article 9.d., NAC shall report to the Air Force, within 15 days of discovery by management, any suspected misconduct that management has reasonable grounds to believe may constitute a violation of U.S. criminal or civil law. The misconduct to be reported pursuant to this article includes misconduct by any person, including, but not limited to, NAC, NAC's employees and Government employees, when related to the conduct of NAC's business, and shall include misconduct disclosed to NAC from any source relating to NAC's business. NAC will investigate all reports of such misconduct that come to its attention and will notify the Air Force of the

outcome of such investigations and any potential or actual impact on any aspect of NAC's Government business. NAC will take corrective action, including prompt restitution of any harm to the Government. NAC will include summary reports of the status of each such investigation to the Air Force in the reports submitted pursuant to Article 9 until each matter is finally resolved.

14. LETTERS TO MAJOR SUPPLIERS AND MAJOR SUBCONTRACTORS.

NAC distributed to its major suppliers and major subcontractors a letter from the Chief Executive Officer (1) emphasizing NAC's commitment to procurement integrity, (2) asking such suppliers and subcontractors to report to NAC's General Counsel and Ethics Officer any improper or illegal activity by NAC employees, (3) and informing them of the contact information for the NAC Hotline. A copy of the letter was included as an exhibit to the Initial Agreement and is incorporated by reference herein. A similar letter will be sent by NAC's CEO to all NAC major suppliers and major subcontractors each year in the month of October. A copy of each year's letter shall be furnished to the Air Force pursuant to Article 9.

15. EMPLOYMENT OF SUSPENDED OR DEBARRED INDIVIDUALS.

Each NAC entity has instituted a written policy stating it shall not knowingly employ an individual who is under indictment, convicted, or listed by a Federal Agency as debarred, suspended, or otherwise ineligible for Federal programs. In order to carry out the policy, NAC shall make reasonable inquiry into the status of any potential employee or consultant. Such reasonable inquiry shall include, at a minimum, review of the General Services Administration's (GSA) List of Parties Excluded from Federal Procurement and Nonprocurement Programs as maintained by GSA on the internet. NAC policy does not require NAC to terminate the employment of individuals who are indicted or become suspended or are proposed for debarment during their employment with NAC. NAC, however, will remove such employees from responsibility for or involvement with NAC's business affairs until the resolution of such suspension or proposed debarment. In addition, if any employee of NAC is charged with a criminal offense relating to business or otherwise relating to honesty and integrity, NAC will remove that employee immediately from responsibility for or involvement with NAC's business affairs. If the employee is convicted or debarred, NAC policy requires that the employee will be terminated from employment with NAC. NAC shall notify the Air Force of each such personnel action taken, and the reasons therefor, within 15 days of the action.

16. BUSINESS RELATIONSHIPS WITH SUSPENDED OR DEBARRED ENTITIES.

Each NAC entity has instituted and posted on its company Intranet a written policy stating it shall not knowingly form a contract with, purchase from, or enter into any business relationship with any individual or business entity that is listed by a Federal Agency as debarred, suspended, or proposed for debarment. To effectuate this policy, NAC shall make reasonable inquiry into the status of any potential business partner, to include, at a minimum, review of the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs including the version of this list maintained by GSA on the internet. Notwithstanding any other provision of this paragraph, NAC may enter into a business relationship with a suspended or debarred contractor, if the General Counsel, and CEO, first determine in writing that a compelling reason justifies the action and furnishes to the Air Force Deputy General Counsel for Contractor Responsibility a copy of the determination not less than 10 days prior to NAC entering into such a business relationship. NAC shall not enter into a business relationship with a suspended or debarred entity if the Air Force objects. In addition to the provisions of this article, NAC shall comply with the requirements of FAR 9.405-2(b) and provide to the Air Force Deputy General Counsel for Contractor Responsibility a copy of the documents submitted to the contracting officer pursuant thereto.

17. FORMER EMPLOYEES:

NAC voluntarily has severed all business relationships with [REDACTED] and [REDACTED]. NAC shall not reemploy any of

these individuals.

18. **PROPOSED CHANGES.** NAC shall notify the Air Force of any proposed significant changes in the relevant directives, instructions, or procedures implemented in furtherance of NAC's Business Ethics Program and compliance with this Amended Agreement. The Air Force, or its authorized representative, retains the right to verify, approve, or disapprove any such changes. No such changes shall be implemented without the prior approval of the Air Force.

19. **ACCESS TO RECORDS AND INFORMATION.** In addition to any other right the Air Force may have by statute, regulation, or contract, the Air Force or its duly authorized representative may examine NAC's books, records, and other company documents and supporting materials for the purpose of verifying and evaluating: (a) NAC's compliance with the terms of this Amended Agreement; (b) NAC's business conduct in its dealings with all of its customers, including the Government; (c) NAC's compliance with Federal laws, regulations, and procurement policies and with accepted business practices; and (d) NAC's compliance with the requirements of Government contracts or subcontracts. The materials described above shall be made available by NAC at all reasonable times for inspection, audit, or reproduction. Further, for purposes of this provision, the Air Force or its authorized representative may interview any NAC employee at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed between the employee and the Air Force. Employees' will be interviewed without a representative of NAC being present. The employee may be represented personally by his own counsel if requested by the employee.

20. **ACCESS TO ELECTRONIC DATA.** To provide complete transparency on movements and charges to any agency in DoD that wishes to review or audit NAC's performance, NAC agrees to offer secure access to a "back end" interface to the NAC data system, which bypasses the web front end, and gives the user access to details about that user's shipments. NAC further agrees to maintain the tight security controls that govern the use of the database including (1) limiting most users to "read only" access and (2) recording all changes made by those users who have access to modify data in a highly secure audit log, which will track the name of the user and the date, time, and nature of each change made by the user. The systems and interfaces required for DoD access will be provided at NAC's expense. NAC agrees to permit DoD access on a 24x7 basis to its database to permit random real time audits of charges. NAC further agrees to have its outside accountants, currently Ernst & Young, LLP, provide an initial and annual reports on the internal controls in the NAC data system and periodic reports of audits or other tests of the data in that system in order to demonstrate that NAC is properly reporting and billing for its work. In addition, NAC is prepared to have its third-party International Organization for Standardization auditors, British Standards Institution, provide a written statement on the controls that have been put in place and audited annually to support NAC's ISO-9000 status.

21. **COSTS OF REVIEW.** NAC paid to the Air Force \$50,000 to cover the Air Force's costs of independently reviewing this matter and administering the Initial and Amended Agreements.

22. **UNALLOWABLE COSTS.** NAC does not hold any cost-reimbursable federal contracts. In the event that NAC enters into such a contract,

a. NAC agrees that all costs, as defined in FAR 31.205-47, incurred by, for, or on behalf of NAC or any NAC current or former officer, director, agent, employee, consultant, or affiliate shall be expressly unallowable costs for Government contract accounting purposes. Unallowable costs include, but are not limited to, costs arising from, related to, or in connection with (a) the matters at issue here, (b) the Government's criminal and civil investigations

regarding the matters at issue here, and (c) the Air Force's independent review of NAC's present responsibility, including the costs of the company's submissions, presentations, and appearances before the office of the Air Force Deputy General Counsel for Contractor Responsibility. NAC's costs of performing and administering the terms of the initial and Amended Agreements and any fines or penalties levied or to be levied in or arising out of the matter at issue here are agreed to be expressly unallowable costs. Also unallowable are NAC's costs of bringing NAC's self-governance, compliance, and/or ethics programs to a level acceptable to the Air Force, as well as the costs of the independent Ombudsman. NAC agrees to account separately for such costs. NAC's present and future costs of maintaining, operating, and improving NAC's corporate self-governance/compliance/ethics programs are allowable costs for purposes of this Agreement.

- b. NAC agrees to treat as unallowable costs the full salary and benefits of any officer, employee, or consultant terminated from NAC's employ or removed from government contracting as a result of the wrongdoing at issue here and the cost of any severance payments or early retirement incentive payments paid to employees released from the company as a result of the wrongdoing at issue here. For purposes of the preceding sentence, the salary and benefits costs shall include all such costs from the first instance of participation of each individual in the matters at issue here, as determined by the Air Force.
- c. NAC recognizes that in order to comply with the terms of this paragraph, certain costs may need to be reclassified. NAC shall proceed immediately to identify and reclassify such costs and, within ninety days of the effective date of this Agreement, NAC shall adjust any bid rate, billing rate, or unsettled final indirect cost rate pools to eliminate any costs made unallowable by this Agreement, and shall advise the Air Force, the cognizant administrative contracting officer, and the cognizant Government auditor of the amount and nature of the reclassified costs within 120 days of the date of this Agreement. The Air Force or a designated representative shall have the right to audit NAC's books and records to verify compliance with this paragraph. Such audit rights shall be in addition to any audit rights the Government may have under the terms of any contract with NAC.

23. **ADVERSE ACTIONS.** NAC avers that adverse actions taken, or to be taken, by NAC against any employee or other individual associated with NAC arising out of or related to the wrongdoing at issue here were solely the result of NAC's initiatives and decisions and were not the result of any action by, or on behalf of, agents or employees of the United States.

24. **NO DEBARMENT.** Provided that the terms and conditions of this Amended Agreement are faithfully fulfilled, the Air Force will not debar NAC based on the facts and circumstances set forth in the Information and Plea Agreement referenced in the Preamble herein. The Air Force's decision not to debar NAC upon the facts at issue here shall not restrict the Air Force from instituting administrative actions, including, without limitation, suspension or debarment should other information indicating the propriety of such action come to the attention of the Air Force, or additional information concerning the facts at issue here is discovered by the Government, which facts were not disclosed by NAC or by the exercise of reasonable diligence could not have been discovered by the Air Force as of the date of this Amended Agreement. This Amended Agreement shall not restrict the rights of other agencies of the Government to take any administrative, contract or other action against NAC.

25. **PRESENT RESPONSIBILITY.** NAC's compliance with the terms and conditions of this Amended Agreement shall constitute an element of NAC's present

responsibility for Government contracting. NAC's failure to meet any of its obligations pursuant to the terms and conditions of this Amended Agreement (and any individual's actions to cause such failure) shall constitute a separate cause for suspension and/or debarment of NAC and such individuals. By entering into this Amended Agreement, the Air Force is not determining that NAC or anyone else is presently responsible for any specific Government contract.

26. **NOTIFY EMPLOYEES.** NAC notified all NAC employees of the fact and substance of this Amended Agreement, the nature of the wrongdoing leading to the Initial Agreement, the reasons for this Amended Agreement, and the importance of each employee's abiding by the terms of this Amended Agreement and all requirements of law, regulations, and NAC policies and procedures. Within 30 days of the effective date of this Amended Agreement, NAC's CEO shall repeat such notification.

27. **NAC PURCHASE OF BUSINESSES.** In the event that NAC purchases or establishes new business units after the effective date of this Amended Agreement, NAC shall implement all provisions of this Amended Agreement, including any training or education requirements, within 60 days following such purchase or establishment.

28. **SALE OF NAC BUSINESSES.** In the event that NAC sells or in any way transfers ownership of any part of its business, NAC shall notify the Air Force in advance and shall require by the terms of the transfer that the new owner, in addition to NAC, shall be bound by the terms and conditions of this Amended Agreement, including, but not limited to, all reporting requirements.

29. **RELEASE.** NAC hereby releases the United States, its instrumentalities, agents, and employees in their official and personal capacities, of any and all liability or claims arising out of or related to the investigation, criminal prosecution, and civil settlement at issue here, and the proposed debarment and debarment of NAC, and the discussions leading to the Initial Agreement and this Amended Agreement.

30. **PARAGRAPH HEADINGS.** The paragraph headings in this Amended Agreement are inserted for convenient reference only and shall not affect the meaning or interpretation of this Amended Agreement.

31. **COUNTERPARTS.** This Amended Agreement maybe executed in one or more counterparts, each of which shall be an original, but all of which taken together, shall constitute one and the same agreement.

32. **AIR FORCE RELIANCE.** NAC represents that all written materials and other information supplied to the Air Force by its authorized representative during the course of discussions with the Air Force preceding the Initial Agreement and this Amended Agreement are true and accurate, to the best of the information and belief of the NAC signatories to this Amended Agreement. NAC also represents that it has provided to the Air Force all information in its possession relating to the facts at issue. NAC understands that this Amended Agreement is executed on behalf of the Air Force in reliance upon the truth, accuracy, and completeness of all such representations.

33. **ENTIRE AGREEMENT.** This Amended Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, relating to the subject matter hereof. This Amended Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

34. **RESTRICTION ON USE.** NAC shall not use any term of this Amended Agreement or the fact of the existence of this Amended Agreement for any purpose related to the defense of, or in mitigation of any criminal, civil, or administrative investigation or action by any element of the Federal Government.


35. **BANKRUPTCY.** Bankruptcy proceedings shall not affect the enforcement of this Amended Agreement in the interests of the Government.

36. **AUTHORIZED REPRESENTATIVE.** Christopher Alf is fully authorized to execute this Agreement and represents that he has authority to bind NAC.


37. **SEVERABILITY.** In the event that any one or more of the provisions contained in this Amended Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions of this Amended Agreement.

38. **NOTICES.** Any notices, reports, or information required hereunder shall be in writing and delivered or mailed by registered or certified mail, postage prepaid as follows:

If to NAC, to:

General Counsel


If to the Air Force, to:

Deputy General Counsel for Contractor
Responsibility (SAF/GCR) Department
of the Air Force


or such other address as either party shall have designated by notice in writing to the other party.

39. **PUBLIC DOCUMENT.** The Initial Agreement and this Amended Agreement, including all attachments and reports submitted pursuant to either Agreement, are public documents and may be distributed by the Air Force throughout the Government as appropriate and to other interested persons upon request.


40. **MODIFICATION.** This Amended Agreement may be amended or modified only by a written document signed by both parties.

SIGNATURES

National Air Cargo Holdings, Inc.


by: Preston Murray
its: President and CEO
date: 16 December 2009

United States Department of the Air Force

 12/16/09
by: Steven A. Shaw
its: Deputy General Counsel (Contractor Responsibility)
date: